

The University of Chicago

**FEDERAL-STATE ADMINISTRATIVE
RELATIONS IN THE REGULATION
OF PUBLIC SERVICE
ENTERPRISES**

**A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY**

**DEPARTMENT OF POLITICAL SCIENCE
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FEDERAL-STATE ADMINISTRATIVE RELATIONS IN THE REGULATION OF PUBLIC SERVICE ENTERPRISES

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Recent years have seen increasing experimentation with and reliance upon interlevel administrative collaboration for adapting our traditional practices of government to the rapid extension and elaboration of national policies. In many instances, collaboration across the levels has been based upon the well-tried device of the grant-in-aid. In others, the practices of conferring, advising, transmitting official information, and acting jointly or interdependently for the performance of governmental services have been quickened. In yet other instances where federal as well as state agencies now regulate the same areas of business enterprise, a considerable body of collaborative interlevel practice has been developed. It is with this last field, especially as the collaborative action is directed toward the regulation of public service enterprises, that we are here concerned.

Prior to 1933, federal regulation of public service enterprises had a long experience with railroads (1887), a longer experience with banks coming under the national system (1863), and a shorter experience under the Federal Reserve System (1913),¹ and a yet shorter experience with water-power enterprises (1920). States and localities developed agencies and practices for the regulation of railroads and local transportation systems, banks, water, gas, telephone, and electric utilities, and, in the twenties, highway bus and trucking operations. The subjects covered and the extent of the

¹ Legalists may quarrel with this classification of bank regulation, and their legal reasons will be accepted as legal reasons.

authority of the state agencies varied from state to state. Bank regulation on the two levels tended to proceed independently. Federal water-power regulation tended to facilitate state regulation of electric utilities from case to case, largely without the establishment of continuing associative practices. The Interstate Commerce Commission and the state railroad regulation authorities, prior to 1920, alternately spoke of their joint problems—sometimes words resulted in temporary operational association—and scowled at each other over contested areas of jurisdiction. Following the Transportation Act of 1920, the judicial settlement of federal dominance in railway regulation, and the adoption of facilitating administrative agreements, regular practices of interlevel collaboration in certain aspects of railroad regulation developed.² The I.C.C. had since 1910 regulatory authority over certain interstate aspects of telegraphy and telephony, but, in its emphasis upon railroad regulation, largely left these aspects of communication alone. The regulation of radio communication has not had significant interlevel administrative aspects. The regulation of aeronautics, though primarily federal, had included state requirement of federal license for intrastate operation and, in a few cases, state license for such operation.³

While the states were nearly alone in the regulation of public service enterprises, with the exception of railroads, the enterprises grew and were combined into operating units transcending state lines, financial control ascending, at the same time, through pyramids of corporations to holding companies. Both the horizontal and vertical movements removed aspects of utility operations from state authority, either through judicial protection of interstate commerce from state action or through the inaccessibility of the corporate kinsfolk.

In the period 1933 through 1935, Congress by a series of acts illuminated much of this utility shadowland, provided standards and agencies for the regulation of aspects which had outgrown the states, protected in considerable degree from federal administrative action the spheres of public service enterprise traditionally within effective state authority, and, with a few exceptions, provided for

² For a history of I.C.C.-state relations to 1935, see National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935 (New York), pp. 313-52. All issues referred to herein are published by the State Law Reporting Co.

³ *Ibid.*, 1932, pp. 550-51, 557, for tabulations of state aeronautics regulation of that date.

federal-state collaboration in the administration of portions of the acts.⁴

The geometry of politics in these legislative movements frequently included demands by and in the name of state regulatory commissions for regulation of the aspects of public service enterprises which had escaped these agencies, for the protection of their own jurisdiction, and for assistance in their regulatory problems. Thus federal-state collaboration in the administration of the new acts was in part a result of representations on behalf of the state regulatory commissions at the legislative phase.

The chief instrument of the states in these representations was the National Association of Railroad and Utilities Commissioners. As early as 1925, the Association proposed a motor carrier act including many of the provisions of the present act, and in the following years it asked the enactment of a revised plan which in 1935 was substantially adopted.⁵ The mark of the National Association is likewise found in the Communications Act, "the representatives of this Association [being] able to secure the incorporation into the bill of [a] provision" excluding federal authority over local telephone exchange service, even where interstate.⁶ In the pre-legislative phase of the Public Utility Act, representatives of the National Association conferred with the Federal Power Commission and agreed upon the limits of federal authority to be specified in the act and upon the provisions for federal-state collaboration.⁷ In all of these instances, the state officials congratulate themselves that the "excesses" of federal jurisdiction over railroads are not to be repeated under the new acts. Descriptions of the practices of inter-level action under the various acts, with indications of tendencies where possible, are found in the following sections.

INTERSTATE COMMERCE COMMISSION RELATIONS WITH THE STATES

Federal-state administrative collaboration in the regulation of transportation has been conditioned by the issues and facts of constitutional jurisdiction over rail and motor carriers. When there has

⁴ The Securities Act and the Federal Deposit Insurance Act in 1933, the Securities Exchange Act and the Communications Act in 1934, the Motor Carrier Act, the Public Utility Act, and the Banking Act in 1935 were the congressional contributions.

⁵ National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 352-58.

⁶ *Ibid.*, pp. 360-61.

⁷ *Ibid.*, pp. 365-67.

been competition for jurisdiction between the two levels, or when impending judicial decisions made the boundaries of jurisdiction unclear, collaboration has been infrequent or restricted to uncontroversial matters. When constitutional uncertainties have been removed, and when Congress has given specific authorization, interlevel action has developed freely.

Railroad Regulation. Early in the history of the Interstate Commerce Commission, members saw the desirability of coördinating their work with that of the state commissions. Conferences ensued, but agreement could be reached only on matters such as the accounts and statistics which the railways should keep and report. Differences over the rôle which the federal agency was to perform prevented additional agreement.⁸

The desirability of interlevel collaboration in the treatment of disparities between interstate and intrastate determinations of railway rates was expressed in recommendations of the I.C.C. several times prior to 1920. The Transportation Act of that year, for the first time, gave legislative authorization and direction for the interlevel treatment of such difficult issues. The act (1) required the I.C.C. to notify state regulatory commissions when any proceeding before the Commission brought into issue determinations (orders or regulations) of the state commissions on matters of rates, services, and other practices; (2) authorized the I.C.C. to confer with state commissions on rate matters and to hold joint hearings with state commissions where the authority of the states may be affected by the Commission's action; and (3) authorized the Commission to avail itself of the coöperation, services, records, and facilities of state authorities in enforcement of the act.⁹

These provisions were implemented by an agreement entered into first in 1922 and revised in 1925 stating policies and procedure for the use of the joint devices. Joint committees composed of five from the I.C.C. and eight from the association of state commissions drew up the agreements in both cases.¹⁰ After the issues of jurisdiction under the new act had been judicially clarified, use of the joint

⁸ I. L. Sharfman, *The Interstate Commerce Commission* (New York, 1931-37), I, 82-83. See the excellent article by Martin L. Lindahl, "Coöperation Between the Interstate Commerce Commission and the State Commissions in Railroad Regulation," *Mich. Law Rev.*, Vol. 33 (1934-35), 338-97.

⁹ 41 Stat. 484. Sharfman discusses the provisions in *op. cit.*, II, 308-09.

¹⁰ Sharfman, *op. cit.*, II, 310-16.

hearing device became frequent, reaching its height in the mid-twenties. Table 1 indicates the trend in this activity, showing a tendency to decline since 1926 and becoming accentuated during the present decade.¹¹

TABLE 1. NUMBER OF CASES IN WHICH JOINT STATE-I.C.C. HEARINGS WERE HELD ON RAILROAD MATTERS
1922-39^a

Year	Car Service Cases	Construction and Abandonment Cases	Rate Cases	Total Cases
1922-25	3	36	41	80
1926	(6) ^b	44	51	101 ^c
1927	6	18	28	52
1928		38	28	66
1929		36	26	62
1930		41	22	63
1931		25	20	45
1932		19	22	41
1933		57	14	71
1934		22	16	38
1935		7	14	21
1936		15	7	22
1937		14	10	24
1938		6	10	16
1939		9	14	23
1940		2	8	10

^a Source: through 1929, I. L. Sharfman, *The Interstate Commerce Commission*, II, 317; since 1929, I.C.C., *Annual Reports* (see contents for item, "Coöperation of Federal and State Commissions").

^b Parentheses signify number of states acting in such cases.

^c The total given assumes that each of the six states in the first column acted in one case.

Although the number of cases tended to decline during the thirties, it is said that "most of the important general rate cases which have been heard by the Interstate Commerce Commission since the adoption of the agreement have been coöperative cases."¹² State commissioners, however, received the impression that the I.C.C. did not favor the use of the joint hearing device in the so-called

¹¹ See Lindahl, *op. cit.*, for characteristics of the joint hearing.

¹² National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, p. 340.

Shreveport cases.¹³ The I.C.C., however, disclaimed such an attitude and invited the participation of the states in these actions.¹⁴ In 1937, the National Association of Railroad and Utility Commissioners adopted, with the approval of the I.C.C., a revision of its agreement for joint hearings in which attempt was made to clear up this misunderstanding and to define more specifically other mutual understandings of the federal and state commissions.¹⁵ As a result of the policy shifts occurring in connection with these negotiations, it is said that "Shreveport litigation in the courts has now almost disappeared."¹⁶ The Transportation Act of 1940 gave the I.C.C. authority to reimburse state commissioners for expenses incurred by them in attending joint hearings.

Motor Carrier Regulation. With the passage of the Motor Carrier Act of 1935, the legislative basis was prepared for a new set of relationships between the I.C.C. and the state commissions regulating trucks and buses. The act established a system of federal (I.C.C.) regulation of interstate commerce by motor carriers, including complete federal authority with respect to permission to operate, rates, safety considerations, etc. All states but one had some degree of regulation of trucks or buses, but their jurisdictions had, in part, been judicially eaten away by rulings preserving the freedom of interstate commerce. The loss of jurisdiction by the states resulting from the strong, inclusive terms of the federal act was made more palatable to the states by the inclusion of provisions for state participation in administration. The act directs the I.C.C. to refer certain cases for original hearing and provisional determination to joint boards consisting of representatives of the state governments involved in the issue, and permits I.C.C. reference of additional cases to such joint boards. The matters required to be so referred are: (1) those in which the motor carrier operations or proposed operations involve no more than three states; and (2) with respect to type of issue, those involving application for, sus-

¹³ Cases in which the I.C.C. increases intrastate rates over the objection of state commissions on the ground that the state-prescribed rates discriminate against interstate commerce. The name derives from the judicial decision allowing such I.C.C. orders.

¹⁴ National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 342-52, 372-87.

¹⁵ *Ibid.*, 1937, pp. 49-52, 54-56; text at pp. 62-69.

¹⁶ *Ibid.*, 1939, p. 170.

pension, or revocation of license, etc., application for privilege of merger, etc., complaints as to violation of law and rules, and complaints as to rates and charges.¹⁷

Joint boards ordinarily consist of a member from each state affected by the matter at hand. When the need arises for such a board, the Commission must notify the commissioners of the states concerned, asking them to *nominate* a person from their membership or otherwise. In case the state commission fails to nominate, the governor may do so. If it approves of the nominees, the Commission *appoints* them as members of the particular boards. Subsequently, the difficulty of authorizing substitutions on short notice resulted in I.C.C. appointment of as many as five board members from each state for each board, so that any one of them would be qualified. If two or more members of a board are appointed, the board may proceed to operate even though a third or other state does not nominate. Boards, once formed, continue in existence until dismissed by the Commission. And a state may at any time offer a new nominee in place of its representative on a board. While on duty, members of state boards receive travel and subsistence from the federal government. While sitting on a case, joint boards have the same rights, powers, and duties as examiners of the Commission.¹⁸ The I.C.C. "has never appointed as a member of a joint board anyone except a member of a state agency or an employee of a state agency, but the Commission has never refused to appoint a nominee who is either a member or an employee of a state agency. Joint board members are usually employees rather than heads of state agencies."¹⁹

In addition to the required use of joint boards, "the Commission is authorized to confer with or to hold joint hearings with any authorities of any state in connection with any matter arising in any proceedings under" the Motor Carrier Act, and is "also authorized

¹⁷ 48 Stat. 548. For a thorough analysis of the genesis, and the administrative and constitutional considerations at the time of enactment, see Paul G. Kauper, "Utilization of the State Commissioners in the Administration of the Federal Motor Carrier Act," *Mich. Law Rev.*, Vol. 34 (1935-36), 37-84.

¹⁸ 49 Stat. 549. See Kauper, *op. cit.*, for considerations of conflict of office in these appointments.

¹⁹ Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission* (Washington, Department of Justice, Monograph No. 24), II, 169.

to avail itself of the coöperation, services, records, and facilities of such state authorities as fully as may be practicable in the enforcement or administration" of the act.²⁰

Orders recommended by joint boards have the same status as orders recommended by an examiner or member of the Commission who has conducted a hearing. That is, the order stands as the order of the Commission unless protested by an affected party or revised on the initiative of the Commission. By an amendment of 1938, joint boards may, if they do not wish to recommend an order, make findings of fact on the basis of which the Commission will enter an order.²¹

In undertaking the administration of the act, the Commission considered it necessary before establishing rules and regulations for interstate motor carriers to consider "the present requirements of state and municipal authorities," and to avail itself of the "advice and counsel of the several state regulatory bodies having jurisdiction over motor carrier operations."²² Regulations as to the forms of accounts to be kept by motor carriers were put into effect by the Commission on January 1, 1938, and monthly, quarterly, and annual reports were prescribed. The Commission says: "It is gratifying to report that splendid coöperation with state authorities has been received in respect to these accounting regulations." To meet the situation in which many carriers would have to report to at least two agencies, "informal correspondence was inaugurated with the state authorities, with the result that in the case of all states, save one, in which forms of accounts are prescribed for intrastate motor carriers, the carrier will be required to keep but one set of accounts, and that is to be in conformity with our requirements."²³ The number of states requiring annual reports from carriers under their jurisdiction in conformity with the reports to the federal agency was, in 1940, twenty-one; and additional states were contemplating establishing identical annual report requirements.²⁴

The formulation of rules for equipment and operation in the interest of safety presented knotty problems of differing practice. The

²⁰ 49 Stat. 550. One of the few congressional recognitions of official associations, and an intimation of the congressionally anticipated relations under the act is the provision that space in the I.C.C. building, or otherwise, should be provided for the national association of state commissioners. Such space was provided in the I.C.C. Building.

²¹ 52 Stat. 1237.

²² Interstate Commerce Commission, *Annual Report*, 1935, p. 74.

²³ *Ibid.*, 1938, p. 84.

²⁴ *Ibid.*, 1940, p. 107.

Commission reported in 1936 that it had found the states "ready and willing to coöperate in every way, to our great benefit" in consultations on this matter at each stage.²⁵ Rules were promulgated at the end of 1936, and were accompanied and followed by wide adoption by the states. Some states had no rules, and in some others the existing state rules did not conflict with new federal rules. By July 1, 1940, forty states had adopted part or all of the Commission's motor carrier safety regulations.²⁶

A peculiar instance of federal dependence on state standards is found in the I.C.C. regulations relating to the companies with which motor carriers may insure against liability. Says the Commission:

"Under our rulings any insurance company is qualified to file certificates of insurance in behalf of a carrier if it is licensed to do business by each state in which the operations of the carrier are covered by the insurer's liability. We have, in effect, adopted for our purposes the standards of eligibility and responsibility for insurance companies established in the several states for the protection of their citizens."²⁷

The putting into effect of federal license provisions created difficult problems in the solution of which the states gave aid. A "grandfather clause" of the act authorized the issuance of federal licenses to all motor carriers operating in interstate commerce as of certain dates. Over 80,000 operators applied for licenses on this basis, and much trouble was encountered in verifying the information submitted in applications. In 1936, the Commission said: "The facts in regard to bona-fide operation on the 'grandfather' date, including routes and character of traffic handled, are being checked on the records of the state authorities, and with their help," as well as by other means.²⁸ Though having some field force for the detection of violations of rules and license requirements, the I.C.C. has been in some degree dependent on the willingness of the industry to police itself, and upon state commissions and officials. In 1936, the I.C.C. reported that "state commissions are reporting conditions to our field forces;"²⁹ while in 1939, a "nation-wide survey" of compliance with the federal rules regarding hours of service of drivers was conducted, "in which state agencies coöperated in many cases."³⁰

Although it is not evident that the joint board device for the

²⁵ *Ibid.*, 1936, p. 84.

²⁶ *Ibid.*, 1940, p. 115.

²⁷ *Ibid.*, 1937, p. 73.

²⁸ *Ibid.*, 1936, p. 71.

²⁹ *Ibid.*, p. 83.

³⁰ *Ibid.*, 1939, p. 117.

conduct of hearings has been employed to its anticipated degree, the system has apparently had wide use. As early as 1936, the Commission reported that "at least one joint board representative from each state is engaged in this work at all times."³¹ Though rarely is a case set for joint board hearing except where the Commission is under statutory compulsion to offer that form of hearing to the states affected, well over one-half of the cases under the act which are set for formal hearing are heard by joint boards.

In Volumes II through VII of the I.C.C. Motor Carrier Cases appear 453 cases heard by examiners of the I.C.C. The corresponding number for the joint boards is 825. In these cases, the joint boards had a better record in getting their rulings sustained by the I.C.C. than did the latter's examiners; nearly 14 per cent of the examiner's rulings being reversed or modified, compared with 10.4 per cent for the joint boards.³² These tabulations omit one volume which reports only "finance" cases.

The arrangements for scheduling the large numbers of joint board cases have presented a difficult task, and the demands upon state staffs for services on joint boards have been heavy. Although there is some protest from the state side regarding this burden, the general attitude has been: "We asked to participate and, therefore, we should do our part."³³ That this has not been the universal attitude of state representatives is shown by the observation that in twenty per cent of the hearings scheduled before joint boards no state representative appears, and that in an additional portion only one joint board member appears. An examiner of the I.C.C. Motor Carrier Section, known as a joint board agent, attends each joint board hearing to "advise and assist" the board. When the board members do not appear, the joint board agent conducts the hearing. It appears that with a full board present the I.C.C. agent generally conducts the hearing and almost invariably drafts the report and recommended order.³⁴

³¹ *Ibid.*, 1936, p. 79.

³² National Association of Railroad and Utilities Commissioners, *Proceedings*, 1938, p. 218.

³³ *Ibid.*, 1936, pp. 171-89, 199-229. In more recent years National Association members were somewhat worried about jurisdictional problems, viz., the assumption of federal jurisdiction over intrastate carriers who trans-ship goods which are in interstate commerce.

³⁴ Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission*, pp. 169-70.

A few cases have involved the use of the joint hearing—as in railroad cases—in which representatives of the states sit with a section of the I.C.C., participate in the hearing, and express their views on the findings and the proper rulings to the federal commissioners, who, legally, make the decision. These cases have involved motor carrier insurance regulations,³⁵ freight classifications, and rates.³⁶

The conditions prevailing with respect to motor carriers seem to have been propitious for considerable degrees of federal-state interaction. State experience in truck and bus regulation, the previously unregulated interstate commerce, legislative recognition of a place for the states in federal enforcement, the hugeness of the regulatory task, and an attitude among the federal administrators favorable to collaboration with the states have combined to produce apparently mutually satisfying relations at many points in the administration. If experience with the joint boards has indicated a need for revision of the device, or a redefinition of the cases in which it should be used, the facilities of the National Association are available for a reconsideration of the problem.

FEDERAL DEPOSIT INSURANCE CORPORATION

Activities pursuant to the creation of the Federal Deposit Insurance Corporation in 1933 have created a new web of federal-state relations. Not only have new interofficial activities developed; in addition, federal jurisdiction over banking has been so extended that the portion remaining solely within state jurisdiction is very small.

At the inception of Federal Deposit Insurance operations, American banks fell into three classes according to their supervisory authorities—national banks, state banks which were “members” of the Federal Reserve System, and state banks not “members.” The first two classes were required by the act creating the F.D.I.C. (in order to retain their class status) to insure their deposits with the Corporation. The third class (state banks under sole state authority) were permitted to apply to the Corporation for insurance of deposits. It is with respect to this group that the new inter-level relations have been developed.

³⁵ I.C.C., *Annual Report*, 1938, p. 220; *ibid.*, 1939, p. 170.

³⁶ *Ibid.*, 1940, p. 37.

The statutory terms, with respect to the third class, provided that:

"Any State bank which is not a member of the Federal Reserve System, with the approval of the authority having supervision of such State bank and certification to the Corporation by such authority that such State bank is in a solvent condition, shall, after examination by, and with the approval of, the Corporation, be entitled to become a member of the Fund."³⁷

By the end of the calendar year 1933, over 7,800 applications were received, and the applications of nearly 1,000 rejected.³⁸ Although the F.D.I.C. established a system of bank examination and conducted examinations of applicant banks, the following statement in a report of the Corporation suggests that the certifications of solvency by state authorities were critical in determining admission to the insurance fund. Said the chairman of the Corporation:

"It was natural, in view of the speed with which deposit insurance originally was put into effect and in view of the fact that certification of mere solvency was the sole requirement for admission to the temporary insurance fund, that some banks should become insured that had meager chances of long survival. It was clearly the intent of Congress, however, that insurance should be extended to the greatest possible number of depositors. Leniency on the part of supervisory officials in certifying the solvency of institutions under their jurisdictions, therefore, was probably socially preferable to a too rigid measurement of asset sufficiency."³⁹

Thus, at the stage of admitting banks to the insurance system, it would seem that the federal agency depended in considerable degree on determinations made by state bank regulating authorities.

F.D.I.C. relations with the states have assumed three other prominent phases: the F.D.I.C. stimulation of state legislatures to pass acts facilitating corporation operations, the case-by-case relations between the Corporation and the state authorities when state banks get into insecure condition, and the attempts by the F.D.I.C. to alter and make uniform the standards used by state authorities in chartering and regulating banks.

State legislation sought by the F.D.I.C. was the authorization of state bank participation in the insurance system, authorization of the appointment of the F.D.I.C. as receiver or liquidating agent of closed insured banks, authorization of borrowing by state banks from the Corporation, specific authorization for collaboration be-

³⁷ 48 Stat., 179.

³⁸ F.D.I.C., *Report of Operations*, 1934 (Washington, 1934), p. 3.

³⁹ F.D.I.C., *Report to Insured Banks*, June 30, 1939 (Washington, 1939), pp. 2-3.

tween state authorities and F.D.I.C. examiners in making examinations and in the exchange of information, and legislation giving state bank authorities greater control over the chartering of new banks.⁴⁰ By 1936, these proposals "had been adopted in whole or in part in most of the states."⁴¹ More specific indication of the effects of this influence is to be seen in the statement in a report for 1937 that the "appointment of the Corporation as receiver for suspended insured state banks was possible in 31 states. In 7 other states, the state banking authorities may appoint the Corporation to assist in the liquidation of closed banks."⁴²

Interlevel activities in the treatment of specific cases defy generalized description and defy much more the demarcation of trend lines. However, a few types of such action can be pointed out. Through its periodic examination of banks, the F.D.I.C. may discover practices which are illegal, "unsafe, or unsound," facts which may become grounds for discontinuing the insurance of deposits. When these findings occur, the F.D.I.C., according to its published statement of practices, cites the bank to its supervising authority—the state bank regulation agency in the case of state banks. After a waiting period of 120 days, the F.D.I.C. reexamines the bank to see whether it has on its own initiative, or the initiative of the state authority, repaired the conditions complained of, the Corporation proceeding thereafter on the basis of such findings.⁴³ There is implicit evidence from the F.D.I.C. reports that the federal agency participates with the state agencies in a much more informal manner than the described procedure would imply. Where relations are "good," it would seem that there is a free exchange of information regarding "troubled" banking institutions and a negotiated treatment of the issues of the desirability and practicability of saving banks by loans, mergers, or both, or of proceeding with liquidation and the payment of insured depositors. For instance, in 1937, the Corporation reported that it was "coöperating with several supervisory authorities in making a complete survey of the banks under their supervision with a view to determining what corrective steps can be taken with regard to weak and unsound banks."⁴⁴ Although the issues of jurisdiction over the property of closed insured banks seem generally to have been amicably settled between the levels,

⁴⁰ F.D.I.C., *Annual Report*, 1936 (Washington, 1937), pp. 32–33.

⁴¹ *Ibid.* ⁴² *Ibid.*, 1937, p. 24. ⁴³ *Ibid.*, 1936, pp. 16–17.

⁴⁴ F.D.I.C., *Report to Insured Banks*, June 30, 1937 (Washington, 1937), p. 3.

the Corporation secured the enactment of an amendment in 1938 relieving it of the obligation to pay depositors in closed state banks until the Corporation's rights to the depositor's share of the assets of the bank are clearly recognized by state law, administrative authority, or otherwise—an indication that a sanction was needed in some states.⁴⁵

F.D.I.C. has attempted to promote policies of banking and state administration of banking which in the opinion of the Corporation's directors would give the insurance program the greatest likelihood of success. Viewing the federal assumption of deposit insurance as possibly conducive to less caution on the part of bankers and less sense of responsibility on the part of state administrations, and reminding themselves that commercial banking must have a better record in the future than in the past if the existing system of insurance is to succeed, the directors have undertaken, in addition to the formulation of banking rules and a periodic examination program, programs of securing the assistance of the state administrations in the effectuation of the F.D.I.C. banking policies. Two programs illustrate this movement. One is that in which the F.D.I.C. discourages the chartering of state banks when the capitalization, the quality of the proposed managers, and the banking and community conditions indicate that the life of the bank is not certain to be long. The Corporation apparently encourages consultation by the state administrators on individual applications for charters and, by provisionally granting or withholding the insurance privilege, attempts to influence state chartering policy. For instance, in one series of reports the Corporation lists the number of banks chartered during the report period which are uninsured—seven, four, and zero, in a recent series. The Corporation said in 1939 that “supervisory officials have continued to coöperate in preventing the organization of unsound banks and in chartering only banks that could qualify for deposit insurance,”⁴⁶ and in 1940 noted that only two of the thirty-two banks first chartered during the year were uninsured at the end of the year.⁴⁷

The other program illustrating this Corporation policy is that of securing agreement to the application of its standards by states in their bank examination activities.

⁴⁵ 52 *Stat.*, 442.

⁴⁶ F.D.I.C., *Report to Insured Banks*, June 30, 1939, p. 2.

⁴⁷ *Ibid.*, Dec. 31, 1940, p. 3.

"In June, 1938, agreement was reached among the supervisory officials of the country with regard to the adoption of uniform standards of bank examination. From the standpoint of supervisors in general, and the Federal Deposit Insurance Corporation in particular, adoption of these standards will make supervisory policy more effective. The standards with regard to the determination and criticism of the quality of loans and securities conform in all essential respects to those which have been used by the Federal Deposit Insurance Corporation."⁴⁸

Reviewing F.D.I.C.'s short history, one may note that the federal agency depended heavily on state bank authorities in the inception of the insurance program and has, especially since 1935, developed practices of association with state agencies in the treatment of particular cases and in the formulation of bank regulation policy.

FEDERAL COMMUNICATIONS COMMISSION

The Communications Act of 1934, in merging the old duties of the Federal Radio Commission and the duties of regulation of interstate telegraph and telephone operations under the new Federal Communications Commission, made a number of allusions to how the new commission should or could act with the states. Any "body politic or municipal organization or state commission" was given specific permission, along with "any person," to file complaints with the federal Commission against any communications common carrier.⁴⁹ In the event of an application to the Commission by a carrier for permission to extend or add to its lines, the Commission is directed to give notice to the "governor of each state in which such additional or extended line is proposed to be constructed or operated, with the right to be heard."⁵⁰ Likewise, in cases of application for permission to consolidate, merge, or purchase telephone companies, the Commission is under obligation to give notice and opportunity for hearing to affected states.⁵¹ The Commission is given authority to exempt from its rules regarding the keeping of accounts, records, and memoranda, and the charging of depreciation, "the carriers of any particular class or classes in any state . . . where such carriers are subject to state commission regulation with respect" to these matters.⁵² Before prescribing any requirements as to the records and accounts which carriers are to keep, the Commission is directed to "notify each state commission having jurisdiction with respect to any carrier involved, and . . . give reasonable

⁴⁸ *Ibid.*, June 30, 1939, p. 2.

⁴⁹ 48 Stat., 1073.

⁵⁰ *Ibid.*, p. 1076.

⁵¹ *Ibid.*, p. 1080.

⁵² *Ibid.*

opportunity to each such commission to present its views, and . . . receive and consider such views and recommendations.”⁵³ The Commission is given authority to classify telephone property according to whether or not it is used in interstate commerce, but not before notice and opportunity for hearing is given to the affected states.⁵⁴

The act of 1934 permits the use of joint boards in the conduct of hearings. Unlike the provision of the Motor Carrier Act, the reference of cases to joint boards is discretionary under the Communications Act. “The Commission *may* refer any matter arising in the administration of this act to a joint board composed of a member . . . from each of the states in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed.”⁵⁵ Boards are to be formed by appointment of the Commission from nominees proposed by state commissions. The Commission is authorized to confer with any state commission having jurisdiction over the same carriers, and, in the typical legislative phrase in these matters, “to avail itself of such coöperation, services, records, and facilities as may be afforded by any state commission.”⁵⁶

Although interlevel action under these provisions has apparently fulfilled the minimum statutory requirements, the Commission has been little inclined to extend associative activity to the degree permitted by the act. Interaction has apparently occurred freely in the formulation of rules for keeping and reporting accounts by carriers and in the exchange or transfer of information resulting from inquiries, but has not been extended to overt inclusion of the state authorities in the formulation of substantive policy or in the determination of issues in particular cases through the joint board or joint hearing devices.

The F.C.C. has taken the view that previous frailty of regulation of telephone and telegraph, especially on the part of states, has resulted from lack of requisite information regarding the practices and policies of the multicorporate communications giants. Complexity of the problem of information and lack of jurisdiction over

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 1098. This is the only authorization in the act for state participation in the regulation of any aspect of radio communication. The Commission has, in its radio licensing work, come into contact with city and state police, and with police groups. *Annual Report, 1935*, pp. 37-40.

⁵⁶ 48 *Stat.* 1098.

its sources have generally frustrated state attempts to secure the necessary facts. The Commission considers its primary function in this matter to be the collection and formulation of the illusive data, both for its own use and for distribution to state authorities.⁵⁷ As directed by statute, the Commission has requested and considered state commission views—sometimes in conference with the state officials—on the problems of utility accounts and records which would produce the desired information.⁵⁸ The Commission's statistical compilations resulting from the accounting rules and reporting system have been freely circulated to state commissions as well as to other interested persons.⁵⁹

A peculiar incident which tends to confirm state interest in and approval of the Commission's rules with respect to the keeping of telephone accounts was the intervention by the National Association of Railroad and Utilities Commissioners in judicial proceedings in which the Commission's authority was being contested by the American Telephone and Telegraph Company. The Company was protesting against the order that its accounts be adjusted to show its property at original cost, and the Association intervened in support of the Commission order.⁶⁰

By joint resolution, Congress in 1935 authorized the F.C.C. to make a long-term study of the American Telephone and Telegraph Company and other telephone companies. Through the distribution of the findings of this study, the states have been provided with much information of use in regulation not available prior to F.C.C. or through the periodical reports of companies to F.C.C.

⁵⁷ This view is expressed in Federal Communications Commission, *Investigation of the Telephone Industry in the United States*, House Document No. 340, 76th Cong., 1st Sess. (Washington, 1939), p. 569.

⁵⁸ *Annual Report*, 1935, p. 66; *Annual Report*, 1937, p. 93. These interactions produced a negotiated agreement after there had originally been many differences. The "Telephone Division has pursued a policy of close coöperation, in all matters relating to telephone accounting, with state regulatory bodies and with the National Association of Railroad and Utilities Commissioners—particularly with the Association's Committee on Statistics and Accounts of Public Utility Companies. . . . The coöperation and assistance of representatives of state regulatory bodies and of the association and its committee are gratefully acknowledged." *Ibid.*, p. 94. Telegraph company accounts received associated treatment the following year. *Ibid.*, 1938, p. 30. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362 ff. ⁵⁹ *Annual Report*, 1935, p. 70.

⁶⁰ F.C.C., *Annual Report*, 1937, p. 92. The case was *American Telephone and Telegraph et al. v. U.S. and F.C.C.*, 14 Fed. S., 121, 299 U.S. 232. The order was upheld,

"Many reports developed during the Telephone Investigation were distributed to the State Commissions. In addition to these reports, the Telephone Rate and Research Group, one division of the investigatory organization, has therefore prepared and the Commission has distributed to the State Commissions its comprehensive reports on the make-up of Bell System toll-rate schedules in force throughout the country, and on the 'principles' which apparently underlie Bell System toll-rate structures. . . . The National Association of Railroad and Utilities Commissioners, through its officials and representatives, as well as the state commissions individually, have at all times offered their full coöperation in connection with the efforts of the Telephone Rate and Research Department, and the Commission deems the development and practice of full and frank coöperation on the many telephone rate problems of joint import to the states and the nation to be a matter of sound public policy."⁶¹

State commissions, upon invitation, sent representatives to hearings and conferences, and supplied "copies of records, briefs, and exhibits in telephone cases heard and decided by them."⁶² The advice of state commissions was sought in the staffing of the federal investigation, and in some cases the loan of state personnel was secured.⁶³

Though there has been free interaction upon most matters, there has been little interlevel participation in the formalities of administrative adjudication. The explanation given is that few cases have arisen in which there has been a desire for such interlevel action. In 1938, an agreement was entered into between the Communications Commission and the state commissioners—through the National Association of Railroad and Utilities Commissioners—stating their understanding of the conditions under which formal joint action is proper under the act, and the procedures to be followed in setting up and using the joint board and joint hearing devices.⁶⁴ Prior to the adoption of the agreement, the telegraph companies had petitioned the federal agency for an increase in interstate rates, giving notice that they anticipated raising intrastate rates as well. Upon negotiation between the federal agency and the Committee on Coöperation of the National Association, it was agreed that the hearing on the case should be "coöperative." The Commis-

⁶¹ F.C.C., *Proposed Report; Telephone Investigation* (Washington, 1938), p. 770; see also F.C.C., *Final Report of the Telephone Rate and Research Department* (Washington, 1938), pp. 71-72.

⁶² Commissioner Paul A. Walker, in National Association, *Proceedings*, 1935, p. 400.

⁶³ *Ibid.*, p. 403.

⁶⁴ The text of the agreement is on pp. 228-33 of the *Proceedings* of the National Association.

sion requested the National Association to appoint a committee to represent the states in the hearings, and although no agreement on procedure existed at the time, the National Association complied. "After an extended hearing and consideration, the application of the telegraph companies was denied. In this decision, all of the state commissioners concurred with the majority of the Federal Communications Commission."⁶⁵

In another case, a telephone company serving a metropolitan area in two states attempted to enlarge its "exchange" (local call) area, reducing its "toll" (long distance and hence interstate, under the statute) business, thus retreating from federal jurisdiction. The federal Commission instituted a hearing in the matter and invited the relevant states to appoint representatives to sit with federal representatives at the hearing. No other cases involving collaborative use of the formal hearing procedures had arisen through fiscal 1940.

Many of the complaints received by the federal Commission relate to conditions in local exchanges, and are thus outside federal jurisdiction. "Upon the receipt of a complaint relative to a matter beyond the scope of the Commission's jurisdiction, the complainant is advised of such fact and referred to the proper local or state regulatory authority."⁶⁶ In some state cases, federal investigational employees have been loaned to the states.⁶⁷

Apparently, federally collected information has passed freely to the states. The question arises as to the usefulness to states of utility accounts established on bases other than those approved for rate-making by state statute, judicial decision, or commission ruling. In so far as states maintain different standards from those imposed by the federal Commission, it would seem that such records would have limited usefulness. Conceivably, the availability of full information upon one basis may result in a tendency to adopt that basis rather than the continued use of bases with respect to which only incomplete information, or information provided at the discretion of the companies, is available. No evidence is here adduced to indicate any such tendency. The stakes involved in communication regulation are so great that the possibility of shifts in policy at both federal and state levels precludes estimates of future federal-state administrative relations.

⁶⁵ *Ibid.*, 1938, p. 227.

⁶⁶ *Ibid.*, 1936, p. 37.

⁶⁷ *Ibid.*, 1938, p. 150.

FEDERAL POWER COMMISSION

Prior to 1935, Federal Power Commission relations with the states were concerned almost wholly with hydroelectric power. States or municipal corporations, along with private corporations, were applicants to and licensees of the federal agency for the use of points along navigable streams for water-power production. Licensees, governmental or public service, were under federal regulation in the construction of such works, and, when not regulated by state commissions, in matters of accounts, rates, and services. To states regulating electric utilities, the Federal Power Commission provided available information about federal licensees. There was also collaboration with the states in planning the use of water power, in federal collection of fees from water-power licensees for use of state lands, and in incidental matters, such as federal evaluation of privately operated hydroelectric works which a state wished to purchase.⁶⁸

The Public Utility Act of 1935⁶⁹ and the Natural Gas Act of 1938, by endowing the Power Commission with authority to regulate some intrastate aspects of interstate electric and gas utilities, and by specific references to action with the states in these matters, have established a new system of operating relationships between the levels. The act of 1935 (1) authorized use of the joint board composed of representatives of the affected states in the original hearing and determination of cases arising under the act; (2) authorized the conduct of joint hearings between the federal agency and representatives of one or more states in matters of related juris-

⁶⁸ See Federal Power Commission, *Annual Report*, 1934 and previously. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362-65.

⁶⁹ Though none of the acts administered by the Securities and Exchange Commission specifically provides for collaboration with state officials, such relations have developed at various points. Information secured by the S.E.C. from utility holding, intermediate, and service company reports based on a uniform accounting system is freely supplied to state utility regulation authorities, as is information derived from the registration statements filed with the Commission by utilities. The S.E.C. acts as a clearing-house of information regarding persons suspected of securities frauds, having files on over 35,000 such persons and providing periodical confidential releases as well as special services to state securities law enforcement authorities. Joint federal-state action in securities issuance and fraud matters occurs freely in some states, rarely in others. The S.E.C. is a member of both the National Association of Railroad and Utility Commissioners and the National Association of Securities Commissioners.

diction; and (3) directed the federal agency to make available any information which "may be of assistance in state regulation," to loan members of its staff to states for service as witnesses, when they may be spared, and to use the services and facilities of state agencies where offered.⁷⁰

These statutory provisions for "coöperation" with the states were implemented by a written agreement adopted unanimously by the National Association of Railroad and Utilities Commissioners and the Federal Power Commission in 1936. The agreement states their understanding of the terms of the statute with respect to federal-state collaboration and specifies procedures for undertaking joint action.⁷¹ The tenor of the agreement is apparent from one of its statements:

"It is understood . . . that the Federal Power Commission or any State Commission will freely suggest coöperation with respect to any proceeding or matter affecting any public utility subject to the jurisdiction of said Federal Power Commission and of a State Commission, and concerning which it is believed that coöperation will be in the public interest."⁷²

Joint action between the levels in the consideration and adoption of rules with respect to electric utility accounting, records, and reports has occurred freely. At the same convention which adopted the agreement with respect to procedure, the National Association of Railroad and Utilities Commissioners adopted a uniform system of utility accounting drafted in consultation with, and having terms in agreement with, the system adopted by the Federal Power Commission.⁷³ By 1937, twenty-one state commissions had adopted the association-approved system, and by 1938, twenty-seven had adopted it.⁷⁴ Consequent to these adoptions, the federal Commission was able to say, in the latter year, that, in consequence of the federal rules and the state adoptions, over ninety per cent of the electric industry—on the basis of assets and revenues—was then required to maintain uniform accounts.⁷⁵ Consultative adoption and promulgation of rules for electric utility property classification, for report forms, and for preservation by utilities of records have fol-

⁷⁰ 49 Stat. 853.

⁷¹ *Proceedings*, 1936, pp. 266-75.

⁷² *Ibid.*, p. 269.

⁷³ *Ibid.*, pp. 49-56; Federal Power Commission, *Annual Report*, 1936, pp. 8-12.

⁷⁴ Only thirty-eight of the states had authority over private electric utility rates in 1935. Federal Power Commission, *Annual Report*, 1936, p. 22.

⁷⁵ *Ibid.*, 1937, p. 5; *ibid.*, 1938, pp. 3-4, 14.

lowed from year to year, with the committee on statistics and accounts of the National Association, as well as the individual state commissions, consulting with the federal agency at all steps. Following the enactment of the Natural Gas Act in 1938, similar negotiations and agreements for uniform records for gas utilities began to take place.⁷⁶ It is indicated that information derived from the reports based on these jointly planned rulings passes freely from level to level for the use of regulatory authorities.⁷⁷

Like the F.C.C.- and S.E.C.-prescribed accounting systems, the rules issued by the Power Commission call for the restatement of utility accounts upon an original cost basis. The Commission has created a field unit to verify original cost studies submitted by utilities. The Commission says that whenever possible its field agents collaborate with the staffs of the relevant state commissions in making these verifications.⁷⁸

The elaborate statutory provisions for joint boards composed of representatives of the states to which formal cases might be assigned for original hearing have apparently gone unused. The joint hearing device in which representatives of the states sit with members of the federal Commission has, however, been used in several cases, especially since 1938, in both electricity and natural gas cases. In fiscal 1940, the state commissions of ten different states participated in such joint hearings. In additional cases, states and municipalities intervened in important cases before the federal agency to advocate their interests. Particularly in matters involving rates for natural gas service, state and local government agencies have joined forces with the federal Commission for comprehensive investigations of the rate structures and operations of the utility companies. Thirteen such investigations were completed during fiscal 1940 or were in progress at the close of the year. Upon some occasions, federal personnel has been loaned to state regulatory agencies.⁷⁹

⁷⁶ *Ibid.*, 1939, pp. 18-19.

⁷⁷ By rule, within the authority of the federal act, the Commission is requiring annual reports—in a form arrived at by collaboration with representatives of the states—from each “private, municipal, and public corporation engaged in generating, transmitting, or distributing electricity,” and having annual operating revenues of over \$50,000. For state or local government utilities, this constitutes an interlevel reporting relationship. All reports cover approximately ninety-eight per cent of the electric utility industry, and are available to the state commissions, as are analyses compiled from them. *Ibid.*, 1938, pp. 11-12, 16-17.

⁷⁸ *Ibid.*, 1939, p. 20.

⁷⁹ *Ibid.*, 1940, pp. 11-12, 61-62, 64.

SUMMARY

The associative activities between these regulatory bodies on the federal and state levels present several identifiable patterns. One of these is the written agreement stating conditions of collaboration which exist in all the cases described except the Securities and Exchange Commission. (The agreement among bank examiners is apparently more properly a statement promising uniform independent action than an agenda for joint action.) In a sense, these correspond to the state plans submitted and approved under the grant programs, but are different in that they are negotiated by the state officials collectively, through their Association, and in that they have no terminal date. Another distinction is that the agreements among the regulatory agencies do not establish an acting relationship. Rather, they state the conditions upon which and the procedures by which active relationship will be established.

Another of these patterns, related in part to the first, is that of the joint planning (or other consideration) of separate or joint action by the officials of the two levels through the device of the joint conference. This may occur as a meeting of federal officials with the representatives of a single state, of a group of states, or with a committee—selected through the official association—representing collectively large numbers or all of the states. The meetings of the official association are, in a practical sense, joint conferences, the officials of both levels having membership. The joint conference may consider a specific local situation and attempt to formulate a joint policy for its treatment, or it may propose a national uniform policy and procedure, as in the case of plans for the records which the regulated shall keep and report. Uniformity in accounting and other records had for some time been sought by interstate administrative agreements, but with only limited success.

A third pattern is that of the joint hearing in which representatives of a single state or a group of states, or state officials representing collectively a group or all of the states, sit with the federal commissioners in the administrative adjudication of a particular issue. In the determination of the federal issue, the state representatives are nominally acting in an advisory capacity, although practice has tended to institutionalize the understanding that the state representatives be heard fully and that, in case of disagreement, the position of the state representatives be given publicity. As originally conceived and used, this device was appropriate in cases in

which the state had before it for hearing the intrastate aspect of the same case which the federal agency was hearing in its interstate aspect. Thus used, it involves the compilation of a joint record and the making of determinations in agreement, if possible. Obviously, in cases in which the state officials represent states collectively, they cannot make determinations in state cases, and the setting of a complementary state hearing has not been regarded as necessary to the successful use of the device, even when direct representation exists. In collective representation on these hearings, the provisions for constituting the state committee call for regional representation, regions coinciding with "rate areas" in railroad cases. Joint hearings have been used in railroad, telephone, telegraph, electric power, natural gas, and motor carrier matters.

Each of the above patterns of relationship, although present in some degree in the new agencies, went through its period of invention and partial development before 1933 in the I.C.C. railroad regulatory activities. The following patterns have had their incidence, or at least their prominent development in interlevel public service enterprise regulation during the last nine years.

The joint board device, authorized first in the Communications Act of 1934, but derived from drafts of the Motor Carrier Act, is the striking innovation of the decade in interlevel regulatory practice. The novel character of this pattern is the delegation—mandatory in some motor carrier matters—of original administrative adjudication to a board made up of state officials from the states concerned in the particular interstate commerce at issue. The Communications and Power Commissions have not yet used the device, but the I.C.C., in its motor carrier enforcement, for which the device was originally intended, has followed this pattern in hundreds of cases. Though inexperience with the device and the necessity for its immediate wide use have produced some complaint from both levels, there is no indication that it will, at the choice of the administrators, be discarded.

Not novel in interlevel administration, but used increasingly during the recent period, were various practices in the interlevel transmission of information. The S.E.C., F.C.C., and F.P.C. have made available their stores of information from the extensive reporting systems they have set in motion, from their analyses of reported data, and from their special studies. State commissions, on

the other hand, have made available to the federal agencies files and briefs on state cases. In these activities, there seems to be the freest of interaction. In some degree, information with respect to specific instances in the form of complaints, or otherwise, passes in both directions freely. Loan of personnel, though in a limited degree, has also operated in both directions between the states and new regulatory agencies.

At least very significant portions of the interlevel collaboration anticipated in the enactments of the decade have been realized, though some of the provisions have not been effectuated. It is to be recalled from the early pages of this article that the statutory position of the states in the federal regulation of public service enterprises occurred in large measure as a result of demands of state administrators. It then becomes relevant to know the concepts which state administrators entertain as to their "position" in the administration of American utility regulation.

An uncommon view among state officials is that expressed by a relatively young commissioner, who, in a discussion of collaboration under the Communications Act, said:

"Now my thought is this, that no matter what we say here, and no matter what is said in the law, I will bet you dollars to doughnuts that before very many years pass by the state commissions will have only a small part of their present jurisdiction in the field of telephone regulation. . . . We are all tied together so closely in all of our dealings, in every phase of human conduct, that we are naturally coming more and more to realize the necessity of a more centralized control of those communication agencies which extend from one corner of this land to the other."⁸⁰

And, to paraphrase his further remarks, "effective regulation" will require federal control.

It has been the tradition of the state commissioners to be jealous of their jurisdictions and fearful of the loss of segments of authority. The extreme form of this point of view, now less frequent than formerly, is found in the statement of a commissioner who was arguing with the president of the National Association for reconsideration of resolutions designed to facilitate interlevel action:

"I want to say not only to you but to the entire Association, I am not obstreperous, but I am obligated to myself, Mississippi, and God Almighty to try and get a little wider severance between states' rights and the Federal Government in things that appertain definitely and strictly

⁸⁰ National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 429, 430.

to intrastate matters. And I just feel after it is all over that maybe I am voting to strengthen those chains that have been riveted upon us rather than striking them off."⁸¹

A third point of view, and one which apparently tends to gather adherents, is that of the commissioner who said, in referring to the tendencies in federal-state relations:

"The time has come when, if the states are going to be effective—I emphasize the word 'effective'—units of government, they not only have got to participate in these matters of regulation, but they have got to give the very best that they have to it. . . . If we are going to preserve the proper functions of the states, we have got to get into this thing in dead earnest. . . . We have got to meet judgment with judgment, experience with experience, skill with skill."⁸²

The last commissioner doubtless expresses both the preference of the majority of state commissioners for continued significant participation in the procedures and some of the conditions for this continuance. Prediction as to this continuance should probably weigh heavily the accomplishments in interlevel associative administration during the decade, although keeping in mind the obstacles to successful state competition in the skill markets.

⁸¹ *Ibid.*, 1938, p. 213.

⁸² *Ibid.*, 1935, p. 441.

